

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN MIKE TAYLOR**, on February 13, 2001 at 8:00 A.M., in Room 422 Capitol.

ROLL CALL

Members Present:

Sen. Mike Taylor, Chairman (R)
Sen. Mike Sprague, Vice Chairman (R)
Sen. Dale Berry (R)
Sen. Edward Butcher (R)
Sen. Vicki Cocchiarella (D)
Sen. Sam Kitzenberg (R)
Sen. Dale Mahlum (R)
Sen. Glenn Roush (D)
Sen. Don Ryan (D)

Members Excused: None.

Members Absent: None.

Staff Present: Bart Campbell, Legislative Branch
Kyanne Kelly, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 357, 2/14/2001; SB 340,
2/14/2001; SB 323, 2/14/2001;
SB 421, 2/14/2001

Executive Action:

HEARING ON SB 357

Sponsor: SENATOR DON RYAN, SD 22, GREAT FALLS

Proponents: Claudia Clifford, State Auditors Office
Verner Bertelson, Senior Citizen Association
Chuck Notbohm, AARP
Al Pontrelli, Association of Insurance Advisors

Opponents: None

Opening Statement by Sponsor:

{Tape : 1; Side : A; Approx. Time Counter : 1.4}

SENATOR DON RYAN, SD 22, GREAT FALLS, said that this bill would require a disclosure statement. He said that sometimes elderly people have bought a viatical policy and then were not told that they have to outlive the person who bought the policy.

Proponents' Testimony:

Claudia Clifford, State Auditors Office, passed out a fact sheet about viatical settlements. **EXHIBIT (bus36a01)** She defined the word viatical as meaning 'provisions for a journey'. Viatical settlements allow you to sell the benefits of your life insurance policy, you receive compensation which is less than the death benefit as a cash settlement with which to end your life. She said this bill is a protection for the person investing in buying a portion of the death benefit. **EXHIBIT (bus36a02)**
EXHIBIT (bus36a03) **EXHIBIT (bus36a04)**

Verner Bertelson, Senior Citizen Association, said this legislation would protect the people who buy into it.

Chuck Notbohm, AARP, supports the bill.

Al Pontrelli, Association of Insurance Advisors, said this bill would be helpful in alleviating confusion in these situations.

Opponents' Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor:

{Tape : 1; Side : A; Approx. Time Counter : 10.9}

SENATOR DON RYAN, SD 22, GREAT FALLS, said this is a good bill.

HEARING ON SB 340

Sponsor: SENATOR DALE BERRY, SD 30, HAMILTON

Proponents: Zane Sullivan, Montana Association of Realtors
Roger Halver, Montana Association of Realtors
Ronda Carpenter, Montana Housing Providers

Opponents: None

Opening Statement by Sponsor:

{Tape : 1; Side : A; Approx. Time Counter : 11.7}

SENATOR DALE BERRY, SD 30, HAMILTON, said for realtors all funds now have to be deposited in the managing supervisors trust account and it becomes a clutter. He said there are real estate agents who buy and sell properties and rent properties of their own and as the law is now, every rent check, everything, has to go into the broker's trust account. He stated that the broker then has to run the money back to the salesperson. He said passage of this bill would change this so that if it is a part of the salespersons personal transaction they wouldn't have to put the money into the trust account. **EXHIBIT (bus36a05)**

Proponents' Testimony:

Zane Sullivan, Montana Association of Realtors, said a real estate salesperson has to be under the supervision of a licensed broker. He said this bill would bring into law that which is already happening, which is that salespersons wouldn't have to put into trust accounts moneys from their own personal transactions. **EXHIBIT (bus36a06)**

Roger Halver, Montana Association of Realtors, said the law as it now exists lends itself to various forms of abuse, this new bill would solve some of the potential problems.

Ronda Carpenter, Montana Housing Providers, said the current law is a good protection for people if the realtor is only managing

the property for someone else. It holds money in trust when there would be nothing else for someone to fall back on.

Opponents' Testimony: None

Questions from Committee Members and Responses:

SENATOR MIKE SPRAGUE asked how the amendments would be covered under the title of the bill.

Roger Halver said the title of the bill is very generic and the amendments will fall under that title.

Bart Campbell said he would check the legality of it.

Closing by Sponsor:

{Tape : 1; Side : A; Approx. Time Counter : 27.2}

SENATOR DALE BERRY, SD 30, HAMILTON, said it doesn't change the supervision of salespeople by the broker, except for their own personal transactions.

HEARING ON SB 323

Sponsor: WALTER MCNUTT, SD 50, SIDNEY

Proponents:

- John Alke, Montana Defense Trial Lawyers
- Webb Brown, Montana Chamber of Commerce
- Larry Jones, Attorney for Liberty Northwest
- Riley Johnson, Federation of Independent Business
- Leland Griffin, Montana Refining Company
- Nancy Schlepp, Montana Farm Bureau
- Patrick Montaban, Oil and Gas Association
- Holly Franz, ASIMI
- Carl Schweitzer, Chamber of Commerce
- Charles Brooks, Billings Chamber of Commerce
- Chris Gallus, Montana Retail Association
- Kristi Blazer, Beer & Wine Wholesalers
- Bob Worthington, Montana Cities and Towns
- Ray Barnicoat, Montana Association of Counties
- Nancy Butler, State Fund
- Jacqueline Lenmark, American Insurance Association
- Derek Brown, Derek Brown Construction
- Mary Allen, Cenex
- Linda Reed, Qwest
- Robert Fisher, Oil & Gas company

**Patrick Montaban, Liquor Owners Association
John Gregor, Crawford & Company**

Opponents: **Al Smith, Montana Trial Lawyers Association
Pete Sherner, Representing himself
Leroy Thom, Small Business Owner, Libby
Les Skramstad, Asbestos Victim
Roger Sullivan, Attorney Kalispell
Don Judge, AFL-CIO**

Opening Statement by Sponsor:

{Tape : 1; Side : B; Approx. Time Counter : 0.2}

WALTER MCNUTT, SD 50, SIDNEY, said this bill comes out of a supreme court decision on exclusive remedy and Montana Worker's Compensation law. This bill would make it clear that injuries in the workplace, unless they are intentional or deliberate acts are not subject to litigation. Since 1915 the Worker's Compensation Act has provided exclusive remedy to employees for work related injuries and work related death and has been a framework for our current Worker's Comp law. He stated that the Montana Constitution says someone can't take an employer to court if the worker is covered by Worker's Comp Insurance, unless it is a deliberate act.

Proponents' Testimony:

John Alke, Montana Defense Trial Lawyers, said once employers purchase Worker's Compensation insurance they should not be held liable outside of the Worker's Comp system, unless intentional harm was done to the worker. Worker's Comp is a qui pro quo system, proof of who was at fault is not needed, and if the worker is injured by his own fault, he is covered by Worker's Comp. He stated that the Sherner case changed things, after which an intentional act with malice is sufficient to be a breach to the exclusivity rule and malice is determined by the jury, it has no definition. He said that prior to the Sherner ruling there was a no fault system, after the Sherner case there are now two systems, so that if the employee is injured through his own fault he gets Workers Comp coverage regardless of the fact his employer did nothing wrong; under Sherner if the employer is actually at fault now the employee gets not only to collect his Workers Comp, he gets to sue in district court simply by alleging that his employer committed an intentional act and allege that the jury should find that that act had malice, and malice can be both actual and implied. This effectively defeats the quid pro quo in workers compensation. The only time a worker should be able to

sue in court outside of the Workers Comp system is if the employee truly intended to injure him

Webb Brown, Montana Chamber of Commerce, said this is a critical issue to business, not only from the stand point of cost but also for the benefit of the employees. He said that businesses are now facing greater exposure to law suits and facing that exposure without any back up liability coverage. He stated taht exclusive remedy forms the very basis of Work Comp wherein employers pledge to cover the medical expenses, lost wages and other benefits following accidents or injuries received on the job. At the same time employers agreed to assign no fault of the employee or other employees in an accident or injury. Employees gave up their right to file law suits in order to have the protection. The exception has always been an intentional act directed to or at an employee. Small business are particularly vulnerable in these situations.

Larry Jones, Attorney for Liberty Northwest, said the employee gives up the right to sue and in return gets a no fault recovery, and a certain return. He further stated that the employer gave up three defenses and in turn got a limited damage system in the form of Worker's Compensation and the exclusive remedy.

EXHIBIT (bus36a07)

Riley Johnson, Federation of Independent Business, said this is the most important bill before the legislature this year for independent business people.

Leland Griffin, Montana Refining Company, said it is important for a small company like his to have a Worker's Compensation system that is known, stable and the exclusive remedy. He said he can't afford to fight legal lawsuits every time someone is hurt and that small companies can not survive under this scenario.

Nancy Schlepp, Montana Farm Bureau, said it is absolutely important for the agricultural community to have an exclusive remedy provision and she urged their support.

Patrick Montalban, Oil and Gas Association, said it would cost jobs and business if the exclusive remedy clause is not in the law.

Holly Franz, ASIMI, said she supports this bill.

Carl Schweitzer, Kalispell and Bozeman Chamber of Commerce, said he supports this bill.

Charles Brooks, Billings Chamber of Commerce, said he strongly supports this bill.

Chris Gallus, Montana Retail Association, said he supports this bill.

Kristi Blazer, Beer & Wine Wholesalers, said she supports this bill

Bob Worthington, Montana Cities and Towns, said he supports this bill.

Ray Barnicoat, Montana Association of Counties, said he supports this bill.

Nancy Butler, State Fund, said that without exclusive remedy they will have greater risk, and that cost would be passed on to the consumer.

Jacqueline Lenmark, American Insurance Association, said her companies would also put an endorsement on Workers Comp policies excluding coverage of liability for suing. She said this Sherner decision is noticed nation wide and that the number of companies writing Workers Comp in Montana will diminish if this bill is not passed.

Derek Brown, Derek Brown Construction, said the only protection an employer has is the exclusive remedy.

Mary Allen, Cenex, said exclusive remedy is an integral part of the Workers Compensation system.

Linda Reed, Qwest, said she supports this bill.

Robert Fisher, Oil & Gas company, said he supports this bill.

Patrick Montabon, Liquor Owners Association, said 98 different stores support this bill.

John Gregor, Crawford & Company, said this bill provides the definition and clarity that is needed for business.

Opponents' Testimony:

Al Smith, Montana Trial Lawyers Association, said that Work Comp is not, "No questions asked". He stated that it sounds good, but it is not how it is. He stated that this bill would relieve big out of state companies of their duty to be responsible and accountable. He further stated that exclusivity was not meant to

be an absolute shield against irresponsible actions by corporations. Prior to the Shermer case there were a handful of cases that were ever brought in Montana to go beyond the exclusivity clause and since Shermer there has not been an explosion of cases. If it was so easy, there would have been an explosion of suits in the past year. He said this bill would create an impenetrable wall, it would set a standard higher than what is required to prove murder. Being able to pierce that exclusivity law is a deterrent to employers to make them think twice before putting employees in harm's way. He said employers should be accountable and responsible for outrageous acts. What the Shermer court looked at was Shermer said he was injured by the companies intentional and malicious disregard for company and industry safety rules. The court said the employer can't hide behind the exclusivity rule if the employer has knowledge of facts or intentionally disregards facts that create a high probability of injury to workers and then deliberately continues to act with the high probability of injury, or deliberately proceeds to act with indifference to that high probability of injury to workers. The court did not say Shermer won his case, the court only said he had a chance to go in front of a jury to try and prove this high standard. It is not that easy to prove malice, in Montana over the past 10 years there have been 20 punitive damage cases in Montana and only 2 or 3 have settled for over \$750,000 and none above 2 million dollars. The concerns of employers are based upon fear, not the facts. He said this bill would let corporations off completely.

Pete Shermer, Representing himself, said he was exposed to hydrogen sulfide gas in his employment. He said he was involved in an industrial incident, not an accident. Conoco violated procedure after procedure, they were cited for 14 willful violations. He said that at the time of the incident they were under extreme pressure for more profits from the parent company DuPont and they put profit before safety. He stated that Shermer vs Conoco doesn't present any problem for responsible employers but it does hold employers accountable for intentional and malicious acts which cause injury to their employees.

Leroy Thom, Small Business Owner, Libby, said this bill would strip away any chance for compensation to him or his fellow workers at the WR Grace mine in Libby who have been affected by the disease. He stated that business owners should be held accountable for their own actions. He further stated that the system in place has worked for 30 years, the two real issues are accountability and responsibility.

Les Skramstad, Asbestos Victim, said he has asbestosis, he didn't get it from an accident he got it from working at the mine in Libby. He also said that he took the disease home to his wife

and children. The only bright spot in this whole deal was that he was able to go to the court house and present his case to a judge and jury.

Roger Sullivan, Attorney Kalispell, said the nature and extent of the disaster of WR Grace in Libby is unprecedented in Montana. He said there are fatal flaws in this bill which strip away the rights of the workers of Montana. What happened in Libby was no accident, it happened because knowledge of the lethal affects were not revealed to the workers of the mine. Approximately 640,000 Workers Comp claims have been filed in the past 20 years. Approximately 4 direct actions have been filed by workers in that time. There has not been a significant problem before Shermer and there has not been a lot since Shermer. In this bill "intentional injury" is defined in a way that for a practical matter there is no way an injured worker could meet that standard. This draft legislation says that the actual knowledge that an injury is certain to occur is the standard in this legislation and will never be met. He said in WR Grace it was employees at the highest level making decisions which injured workers. It is important to not take away the workers legal right when they have been intentionally injured by their employers. **EXHIBIT (bus36a08)**

Don Judge, AFL-CIO, said he opposes this bill.

Questions from Committee Members and Responses:

SENATOR ED BUTCHER said punitive damage by its definition is to punish.

Al Smith said the definition is to punish and deter.

SENATOR BUTCHER asked if any of the injured workers were being inadequately covered for their injury and disability needs through the existing Work Comp coverage.

Al Smith said that every worker in the State of Montana is inadequately cared for by the Workers Comp system.

SENATOR BUTCHER asked where the multi million dollar claims were being paid from.

Al Smith said he thinks it is paid by stockholders of the company.

SENATOR BUTCHER said that then the ones being punished are the stockholders who have no control over the operation.

Al Smith said the deterrent part needs to be remembered.

SENATOR BUTCHER asked if it would be more beneficial if criminal liability statutes were used against the managers or CEO's of companies.

Al Smith said being able to hold a corporations executives responsible would be a great adjunct.

SENATOR DON RYAN asked what striking the word omissions would do to the law.

Larry Jones said it carves out a whole area of possible injured workers claims. He said that you can't make a claim because of the failure to do something, as opposed to an affirmative act.

Al Smith said that by striking omissions it relieves corporations even more. He stated tht workers can be just as badly injured by something that the corporations fails to do.

SENATOR VICKI COCCHIARELLA asked about the concern of employers that they would be sued.

Riley Johnson said that the biggest thing is having to go to court and hire attorneys.

SENATOR COCCHIARELLA asked how the business got to know about the Sherner case.

Riley Johnson said it was from his office.

SENATOR DALE MAHLUM asked if WR Grace owned the mine early on.

Roger Sullivan said WR grace acquired the mine in 1963. He said that the complaints from his clients are from both before and after WR Grace bought the mine.

SENATOR COCCHIARELLA asked if an employee does something stupid at work would that claim get covered.

Larry Jones said it would be covered immediately.

SENATOR RYAN asked why the AFL-CIO opposes this bill.

Don Judge said that it is a matter of the workers being protected.

SENATOR RYAN asked if there should be a way for a worker to have recourse in the event of extreme irresponsibility as in the WR Grace situation.

SENATOR MCNUTT said if it is an intentional, deliberate act they are still protected under this bill.

CHAIRMAN TAYLOR asked why omissions was struck from the bill.

John Alke said if you are focused on the intent to harm someone, it is through a positive act. He said that leaving omissions in the law would be a breach to the exclusivity rule.

CHAIRMAN TAYLOR asked why corporations are exempt completely.

John Alke said the law says assault would be a breach of the exclusivity rule, and corporations can't assault.

CHAIRMAN TAYLOR asked what the cost to employers would be if this bill were not to pass.

Larry Jones said that on the Work Comp side there wouldn't be very much increase of costs.

Closing by Sponsor:

{Tape : 2; Side : B; Approx. Time Counter : 27.7}

WALTER MCNUTT, SD 50, SIDNEY, said there is good reason for employers to fear. He pointed out that the insurance companies said the premiums will go up. He stated that this bill does not address the issues at Libby. He further stated that the court said this is a new rule, and really it should be the legislature that enacts laws to make new rules. He said the employers are not the bad guys and that the way things are without this bill would make employers vulnerable to losing all they have worked for.

HEARING ON SB 421

Sponsor: SENATOR FRED THOMAS, SD 31, STEVENSVILLE

Proponents: **Steve Turkiewicz, Montana Auto Dealers Association**
 Dick Olson, Montana Auto Dealers Association
 Eric Anderson, Placer Motors
 Tom Harrison, Montana Auto Dealers Association
 Bill Lewis, Great Falls Tractor
 Eric Torgerson, Implement Dealer
 Chris Gallus, Montana Equipment Dealers
 Charles Brooks, Montana Chamber of Commerce

Opponents: **Mona Jamison, General Motors**

Informational Witness: **Brenda Nordlund, Department of Justice**

Opening Statement by Sponsor:

{Tape : 3; Side : A; Approx. Time Counter : 5.5}

SENATOR FRED THOMAS, SD 31, STEVENSVILLE, said this bill deals with the retail implement and auto dealers and how they cohabitate with the manufacturers. He said this bill would require that when wholesalers, manufacturers, or distributors terminate or cancel a dealership they have to repurchase from a retailer the products which were required by the wholesalers for them to be in business. He said this would include signs, equipment, furnishings, and special tools. He said it would also require the manufacturer to respond to a buy/sell agreement of the retailer in timely manner. **EXHIBIT(bus36a09)**

Proponents' Testimony:

Steve Turkiewicz, Montana Auto Dealers Association, said there are two sections of law that relate to the manufacturers and retailers. He pointed out that dealers have a franchise which is not negotiable as is a contract and that there are many things the manufacturers require the dealers to purchase. He said he supports this bill which requires the manufacturers to buy the things back. **EXHIBIT(bus36a10) EXHIBIT(bus36a11)**
EXHIBIT(bus36a12)

Dick Olson, Montana Auto Dealers Association, said there are many dealers closing down at this time. He stated that they are left with special tools which have added up to a lot of money, and the manufacturers only take back a small percentage of that. He stated that this bill would allow the fair market value of equipment be given to retailers if the lease is terminated.

Eric Anderson, Placer Motors, said sometimes the manufacturers terminate on a moments notice, and that leaves the retailer holding the bag, so they need some help when this happens.

Tom Harrison, Montana Auto Dealers Association, said this is a crazy situation right now. The more specific this bill can get, the better.

Bill Lewis, Great Falls Tractor, said this bill is for implement dealers also. He pointed out that they have dealers standards and if the dealers elect not to participate they are in trouble. He

noted that he has \$6,000.00 of tools that are still in the wrapper that he just doesn't need.

Eric Torgerson, Implement Dealer, said he is required to buy many tools and other equipment which he doesn't really want, but they are required to have in order to be a certified dealer.

Chris Gallus, Montana Equipment Dealers, said he is submitting written testimony. **EXHIBIT (bus36a13)**

Charles Brooks, Montana Chamber of Commerce, said he supports this bill.

Opponents' Testimony:

Mona Jamison, General Motors, said this is sending a message of anti-business climate in this state. She proposed some amendments to this bill. She said there has to be some balance in this buy-back provision she suggested that it shouldn't go back for more than three years. She also said they want to have two extra weeks to be able to evaluate the buy-sell agreement when it comes in. **EXHIBIT (bus36a14) EXHIBIT (bus36a15)**

Informational Witness: **Brenda Nordlund, Department of Justice** said she was available for information.

Questions from Committee Members and Responses: None

Closing by Sponsor:

{Tape : 3; Side : B; Approx. Time Counter : 7.5}

SENATOR FRED THOMAS, SD 31, STEVENSVILLE, said the 45 days are agreeable for him. He said this bill would tighten up the law a little bit and would be a protection for Montana main street businesses.

ADJOURNMENT

Adjournment: 11:00 A.M.

SEN. MIKE TAYLOR, Chairman

KYANNE KELLY, Secretary

MT/KK

EXHIBIT (bus36aad)